

REMARKS

The Office Action dated August 6, 2008, has been carefully reviewed and the following comments are made in response thereto. In view of the following remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

The Examiner requested certified copies of two priority documents (GB 0106635.6 and GB 0118879.6). Applicant is in the process of obtaining such certified copies and will submit them as soon as they are available.

Objections to Specification

The Examiner objected to the amendment to the specification dated September 16, 2003 on the grounds that it introduces new matter into the disclosure. Applicant has amended the specification to remove the incorporation by reference and submits that this objection is moot and should now be withdrawn.

The Examiner also objected to the disclosure of the specification because it contained embedded hyperlinks. Applicant has amended the specification to remove the embedded hyperlinks and submits that this objection is moot and should be withdrawn.

The Examiner further objected to the specification for not properly referencing Figures 5a to 5c and 6A to 6B. Applicant has amended the specification to accurately reflect these Figures and submits that written support for these amendments can be found in the Figures themselves.

The Examiner objected to the specification for containing unclear text on page 47 and also for the absence of sequence identifiers on pages 98 and 122. Applicant brings to the attention of the Examiner that a substitute specification was filed on January 12, 2007. The substitute specification did not contain any unclear text on page 47 and also recited the sequence identifiers on pages 98 and 122. In view of these amendments and the above remarks, Applicant submits that the objection is moot and should be withdrawn.

Objections to Claims

Claims 2, 3, 7-26 and 136 were objected to because they recite “a method” instead of “the method” in the preamble of these claims. Applicant has either amended or cancelled the claims to address the objection, rendering it moot. Withdrawal of the objection is requested.

Claim 18 was objected to because it contained an abbreviation. Applicant has cancelled this claim, rendering the objection moot. Withdrawal of the objection is requested.

Rejection under 35 U.S.C. 112 (second paragraph)

Claims 1-4, 7-26, 124 and 136 were rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-3, 8-14, 18-19, 22-23, 124 and 136 have been cancelled without prejudice or disclaimer, rendering the rejection moot with regard to these claims.

With regard to claim 4, the Examiner purports that it is unclear why the density of functional immobilized molecules in the array can be reduced as set forth in step (ii) when step (i) does not require functional immobilized molecules. Applicant has amended the claim to recited that step (i) require the presence of a functional molecule as set forth in step (ii).

The Examiner also purports that this claim is unclear why the identity of each molecule is determined prior to immobilization in the absence of a determining step. Claim 4 has been amended to provide that step (i) recite a functional molecule of known identity be immobilized to the solid phase. In view of this, Applicant submits that recitation of a determining step is no longer necessary because the claim recites a method of producing a molecular array and not using a molecular array where such a determination step would be necessary.

The Examiner further purports that it is unclear whether each molecule recited in step (ii) means a plurality of molecules immobilized to a solid phase in step (i) or each of a functional immobilized molecules in step (ii). Without acquiescing to the merits of the rejection, Applicant has amended step (i) in the claim to recite that each individually immobilized molecule is not capable of being resolved, thus clarify that the recitation of “individual functional immobilised molecules” to be a molecule which can be individually resolved.

Finally, the Examiner purports that there is insufficient antecedent basis for recitation of “the resulting array” in claim 4. Without acquiescing to the merits of the rejection, Applicant has removed the term “resulting” from the claim to address the Examiner’s rejection.

With regard to claim 7, the Examiner purports that the claim is vague and indefinite because the density of functional molecules cannot be reduced by only labeling some of the plurality of molecules as recited in this claim. Without acquiescing to the merits of the rejection, Applicant has amended the claim to clarify that only a portion of the immobilized molecules are labeled.

With regard to claims 25 and 26, the Examiner purports that this claim is vague and indefinite because it is unclear that the immobilized molecule means each of a plurality of molecules immobilized to

a solid phase in step (i) of claim 4 or each of functional immobilized molecules in step (ii) of claim 4. Without acquiescing to the merits of the rejection, Applicant has amended the claim to refer to the immobilized molecules in step (ii).

The Examiner also purports that claim 25 is vague and indefinite since claim 1 or 4 does not indicate that the solid phase has a single electrode, it is unclear why the immobilized molecules are immobilized onto a single electrode as recited in claim 25. This rejection is moot with regard to claim 1 in view of the cancellation of this claim. Applicant submits that the presence of an electrode in claim 25 is an additional feature of the solid phase recited in claim 4 and is necessary for detection purposes. As such, Applicant considers the recitation of this term in claim 25 to be clear and sufficient.

With regard to claim 26, the Examiner purports that it is vague and indefinite because it is unclear that an immobilized molecule is identical to one of the immobilized molecules in claim 1. Claim 1 has been cancelled and claim 26 has been amended to depend on claim 4.

In view of the above amendments and remarks, Applicant submits that the rejection under 35 U.S.C. 112 (second paragraph) is moot and request withdrawal of the rejection.

Rejection under 35 U.S.C. 102(b)

Claims 1-3, 8-9, 11-18, 20 and 21 were rejected as being anticipated by Balasubramanian (WO 00/06770). Without acquiescing to the merits of the rejection, Applicant has cancelled claims 1-3, 8-9 and 11-14 and 18. The rejection is therefore moot with regard to these claims.

With regard to claims 15-17 and 20-21, Applicant has amended these claims to be solely dependent upon claim 4. The Examiner has not indicated that claim 4 is anticipated by any of the cited references. In addition, dependent claims 16-17 and 20-21 now recite all of the additional features in claim 4 not present in Balasubramanian. In view of these amendments and remarks, Applicant submits that the rejection is moot and should be withdrawn.

Rejection under 35 U.S.C. 103

Claim 10 was rejected as being unpatentable over Balasubramanian in view of Shultz (U.S. Patent 6268146). Without acquiescing to the merits of the rejection, Applicant has cancelled claim 10. The rejection is therefore moot and should be withdrawn.

Double Patenting Rejection

Claims 1-4, 7-17 and 20-26 were provisionally rejected as claiming the same invention as that of claims 1-4, 7-17, 19, 20 and 26-30 of co-pending application 11/085,679. Claims 1-3, 8-14 and 22-23

have been cancelled, therefore the rejection is moot with regard to these claims. With regard to claims 4, 15-17, 20-21 and 25-26, Applicant submits that the provisional double patenting rejection is no longer applicable in view of the amendments to claim 4. Applicant further notes that because this is provisional type double patenting rejection based upon a pending application, it should be held in abeyance or withdrawn upon a finding of allowable subject matter.

Conclusion

It is respectfully submitted that all claims are now in condition for allowance, early notice of which would be appreciated. Should the Examiner disagree, Applicant respectfully requests a telephonic or in-person interview with the undersigned attorney to discuss any remaining issues and to expedite the eventual allowance of the claims.

Except for issue fees payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a **constructive petition for extension of time** in accordance with 37 C.F.R. 1.136(a)(3).

Dated: **March 12, 2008**
Morgan, Lewis & Bockius LLP
Customer No. **09629**
1111 Pennsylvania Avenue
Washington, D.C. 20004
202-739-3000

Respectfully submitted,
Morgan, Lewis & Bockius LLP

/robert smyth/

Robert Smyth
Registration No. 50,801